IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8661 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SURESHBHAI BHANJIBHAI VAGHELA

Appearance:

1. Special Civil Application No. 8661 of 2003

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Petitioner No. 1

MR KETAN I ACHARYA for Respondent No. 1

MR DIPAK R DAVE for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 24/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the legality of the award dated 1.10.2002, passed by the Presiding Officer, Labour Court, Ahmedabad, by which the

Reference (LCA) No. 1068 of 1986 filed by the respondent workman was allowed in part and the termination of the workman was set aside. The petitioner was directed to reinstate the workman with continuity of service, but granted backwages from 12.2.1996 i.e. the date on which the workman gave his deposition.

2. The case of the respondent workman was that his services were illegally terminated with effect from 21.9.1985. It was stated that the termination is in violation of Section 25F of the Industrial Disputes Act, since admittedly no notice or notice pay was paid to the respondent before terminating his services. The respondent had also suggested before the Labour Court that persons junior to him were retained in service while terminating the services of the respondent.

3. On the other hand, the petitioner had submitted that there was no termination of service and the respondent had abandoned his service. It was in fact suggested that the respondent was irregular in his service and was caught committing theft due to which he was scolded and he therefore had stopped coming for work.

4. The Labour Court, after considering the evidence on record, did not accept the version of the petitioner that the respondent had abandoned the service. In fact the learned Counsel for the respondent has pointed out by a letter dated 24.1.1986 written by the petitioner to the Labour Commissioner, which letter is on record before the Labour Court, wherein it is stated that the respondent was irregular in his service from the beginning and on account of his irregularity and negligence in discharge of his duties, his services were terminated. This, according to the learned Counsel for the respondent, clinches the issue and the stand of the petitioner that the services of the respondent were not terminated, cannot be believed.

5. Though there is some dispute about the exact number of days put in by the respondent so as to enable him to insist that the petitioner should have followed the procedure laid down under Section 25F of the Industrial Disputes Act, there appears to be no dispute about the fact that the persons junior to the petitioner were retained in service. Considering the fact that the petitioner itself had in its letter dated 24.1.1986 indicated that the respondent was terminated from service on account of his irregularity and negligence, theory of abandonment cannot be believed and rightly not relied upon by the Labour Court. The action of the Labour Court

in setting aside termination of the respondent also, in view of the above discussion, cannot be faulted with. I am broadly in agreement with the view taken by the Labour Court, and the direction with respect to reinstatement cannot be interfered with.

6. With respect to the backwages, the learned Advocate for the respodent under the instructions of the respondent who is present in the Court, states that the respondent would not insist for any backwages till the date of the award. In the result, though the decision of the Labour Court is sustained, directions with respect to the payment of backwages are set aside on concession from the respondent. The petitioner therefore, shall have to reinstate the respondent with continuity of service. There shall be no liability to pay backwages till the date of award.

The award of the Labour Court impugned in this petition is upheld subject to the above modifications. The petition is disposed of accordingly. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas